City of Lafayette Staff Report

To:	City Council
Meeting Date:	February 23, 2009
From:	Glenda Warmoth, Assistant Planner
Date Written:	February 4, 2009
Subject:	Agreement relating for installation and maintenance of existing and new landscaping between property owners, Deborah & Lindsay LaRoche and the City of Lafayette, for property located at 298 Lowell Lane West. APN 237-430-017

Introduction

The attached agreement relating to the installation and maintenance of existing and new landscaping between Lindsay & Deborah LaRoche and the City of Lafayette was one of the conditions of approval for design review application HDP12-08. The attached agreement meets the requirements for approval.

Recommendation

Accept agreement relating to installation and maintenance of existing and new landscaping and authorize the City Clerk to record.

11D

Record at the request of City of Lafayette
Return to:
City of Lafayette
Attn: GLW
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between Deborah & Lindsay LaRoche hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 298 Lowell Lane West, (Assessor's Parcel Number 237-430-017) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On August 21, 2008, the City granted a Hillside Development Permit to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Hillside Development Permit, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on August 21, 2008, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3. CITY PROCEEDINGS. Reference is made to the Zoning Administrator proceedings conducted by the City (Planning File No. HDP12-08) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the # condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail at the Property Owner's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Deborah & Lindsay LaRoche
298 Lowell Lane
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
   (a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
   (b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
   (c) This writing contains a full, final and exclusive statement of the contract of the parties.
   (d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Zoning Administrator proceedings.
   (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
   (f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

Deborah LaRoche

_____

Deborah LaRoche, Property Owner

_____

Lindsay LaRoche, Property Owner

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

ORDER NO. : 0112002617-MA

EXHIBIT A

The land referred to is situated in the County of Contra Costa, City of Lafayette, State of California, and is described as follows:

PARCEL ONE:

Portion of Parcel A of Parcel Map filed April 22, 1968 in book 3 of Parcel Maps, page 21, Contra Costa County Records, described as follows:

Beginning at the most western corner of said Parcel A; thence from said point of beginning along the western line of said Parcel A, north 15° 17" 19" east 121.31 feet; thence south 79° 30" 33" east, 163.85 feet to an angle point in the southern line of said Parcel A; thence along said last named line south 66° 03" 57" west, 213.50 feet to the point of beginning.

EXCEPTING FROM PARCEL ONE:

"All oil, gas, petroleum and other hydrocarbon substances, minerals, and water, in, under or recoverable from the portion of subsurface of the above described land ling below a plane parallel to and 500 feet vertically below the surface of said land and the right to remove from, store in and inject into said portion of the subsurface of said land, oil, gas, petroleum and other hydrocarbon substances, minerals and water, and excepting and reserving to Grantors, their successors and assigns, rights of way, easements and servitudes in and through said portion of the subsurface of said land for the purpose of exercising the rights herein excepted and reserved including but not limited to the right from time to time to drill well holes, to case same and otherwise to complete and maintain wells into and through said portion of the subsurface of said land from surface locations outside of said land; provided however, that the rights herein excepted and reserved do not and shall not include the right to enter upon the surface of said land or any portion thereof lying above a plane parallel to and 500 feet vertically below the surface of said land, and do not and shall not include the right to inject or store oil, gas, petroleum or other hydrocarbon substances, minerals or waste into or in any portion of said land lying above a plane parallel to and 500 feet vertically below the surface of land", reserved in the deed from Russell J. Bruzzone et ux, recorded March 10, 1967, in book 5322 Official Records, page 440.

By instrument recorded September 19, 1967, in book 5455 Official Records, page 484, the mineral rights reserved above were conveyed to Utah Construction & Mining Co., a Delaware corporation.

PARCEL TWO:

Parcel C of Parcel Map filed March 29, 1973, in book 27 of Parcel Maps, page 10, Contra Costa County Records. Excepting from Parcels One and Two above those potions described in the deed recorded January 24, 1995, Instrument No. 95-011573, Contra Costa County Records, described as follows:

Portion of Parcel "C", MSL, 11-72, filed March 29, 1973, in book 27 of Parcel Maps, at page 10, and a portion of Parcels "A" M.S. 24.58 filed April 22, 1968, in book 3 of Parcel Maps, at page 21, Contra Costa County Records,
described as follows:

Beginning at the most westerly corner of said Parcel "C" (27 PM 10); thence from said point of beginning and along the southwesterly line of said Parcel "C" south 66° 51" 20" east, 41.65 feet; thence north 22° 25" 45" west 123.78 feet to the most northerly corner of Parcel One in the deed to Fu-Sheng F. and Anita Chang, recorded February 4, 1991, in book 16385, Official Records, at page 284; thence along the northwesterly line of said Parcel One, (16385 OR 284), south 15° 13" 22" west, 121.32 feet; thence along the southerly line of said Parcel One, north 65° 00" 00" east 45.00 feet to the point of beginning.

PARCEL THREE:

Portion of Parcel "B" MSL, 11-72 filed March 29, 1973, in book 27 of Parcel Maps, at page 10, Contra Costa County Records, described as follows: Beginning at the most easterly corner of said Parcel "B", (27 PM 10); thence from said point of beginning and along the northeasterly line of said Parcel "B", north 66° 51" 20" west 207.71 feet; thence south 22° 25" 45" east, 24.22 feet; thence south 54° 00" 18" east, 154.34 feet to the southerly line of said Parcel "B"; thence along said southerly line of Parcel "B", north 61° 03" 15" eat, 65.00 feet to the point of beginning.

PARCEL FOUR:

A Right of Way (not to be exclusive) for use as a roadway fr vehicles of all kinds, pedestrians, and animals, for water, gas, oil and sewer pipe lines, and for telephone, television service, electric light and power lines, together with the necessary poles or conduits, as an appurtenance to Parcels One and Two above, over a portion of Parcel A of Parcel Map filed April 22, 1968, in book 3 of Parcel Maps, page 21, Contra Costa County Records., 20 feet in width, the centerline of which is described as follows:

Beginning at a point on the general north line of said Parcel A, distant thereon north 77° 58" 57" west 58.53 feet from the most eastern corner thereof; thence from said point of beginning south 66° 03" 57" west, 15.00 feet to a point on the arc of a circle having a radius of 90 feet, the center of which bears north 46° 03" 39" west; thence southwesterly along said arc to the right through a central angle of 22° 07" 36" an arc distance of 34.76 feet; thence tangent to said circle south 66° 03" 57" west 93.18 feet; thence southwesterly, southerly and southeasterly tangent to said last mentioned course along the arc of a circle to the left, having a radius of 40.00 feet through a central angle of 80° 35" 57" an arc distance of 58.28 feet to a point on the southern line of said Parcel A and the southern terminus of said strip of land, distant thereon north 82° 05" 33" west, 114.50 feet from the southeastern corner thereof.

PARCEL FIVE:

An easement for sanitary sewer purposes, as an appurtenance to Parcels One and Two above, over a portion of parcel A of Parcel Map filed April 22, 1968, in book 3 of Parcel Maps, page 21, Contra Costa County Records, described as follows:

Beginning at the intersection of the northeast line of said Parcel A with the center line of a 10 foot sanitary sewer easement recorded in book 5440 Official Records, page 159; thence from said point of beginning along said sanitary sewer center line south 9° 02" 19" west 20.00 feet; thence south 53° 42" 59" east 186.35 feet; thence south 7° 54" 27" west 124.78 feet to the southern line of said Parcel A; thence along said southern line south 82° 05" 33" east 5.00 feet; thence north 7° 54" 27" east, 133.81 feet to a point on the general northeastern line of said Parcel A; thence along said last named line as follows: north 77° 58" 57" west, 13.15 feet and north 49° 42" 41" west, 184.08 feet to the point of beginning.

PARCEL SIX:

Right of way appurtenant to Parcel One above, granted in the deed to Benjamin F. Detweiler, et ux, recorded September 26, 1968, in book 5716, Official Records, page 480, as follows:

"An easement for driveway purposes, as an appurtenance to that parcel of land described in the deed to Benjamin F. Detweiler, et ux, recorded April 24, 1968, in book 5609 Official Records, page 598, over that portion of Lot 15, Map of Subdivision 3681, filed July 7, 1967, Map Book 116, Page 20, Contra Costa County Records, lying within the "Driveway Easement" as designated on said Map."

PARCEL SEVEN:

Right of way granted in the deed to Benjamin F. Detweiler, et ux, dated February 2, 1976, recorded February 4, 1976, in book 7755, page 151, described as follows:

"A right of way (not to be exclusive) for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, television service, electric light and power lines, together with the necessary poles and conduits, as an appurtenance to Parcel Map filed April 22, 1968, in book 3 of Parcel Maps, page 21 and Parcel C of Parcel Map filed March 29, 1973, in book 27 Parcel Maps, page 10, Contra Costa County Records, over that portion of Lot 15, Map of Subdivision 3681, filed July 7, 1967, Map Book 116 Page 20, Contra Costa County Records, lying within the "Driveway Easement", as designated on said Map (116 M 20).

(Being APN 237-430-017)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On 1-27-09 (Date) before me, Joanne Lee Robbins, notary, (Here Insert Name and Title of the Officer)

personally appeared Lindsay LaRoche and Deborah LaRoche (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joanne Lee Robbins (Signature of Notary Public)

ESH JOANNE LEE ROBBINS COMM. #1551436 Notary Public-California CONTRA COSTA COUNTY My Comm. Exp. Feb 10, 2009 ESH

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Landscape Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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